

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 United States of America,
5 Plaintiff
6 v.
7 Steven Carr,
8 Defendant
9

2:13-cr-00250-JAD-VCF-3
Order Granting Motion in Limine Re:
“Gang”
[ECF No. 196]

10 Defendant Steven Carr and five co-defendants are charged with conspiracy to interfere with
11 commerce by extortion. The defendants are alleged motorcycle club or outlaw motorcycle “gang”
12 members. Carr moves to preclude use of the word “gang” at trial under Federal Rule of Evidence
13 403. The government has filed no response. I agree that any probative value the word “gang” carries
14 is substantially outweighed by the danger of unfair prejudice, so I grant Carr’s motion. The
15 government may not use the word “gang” at trial to describe the motorcycle organizations at issue in
16 this prosecution. The parties and witnesses are directed to use the word “club” instead.

17 **Discussion**

18 **A. Motions in limine**

19 The Federal Rules of Evidence do not explicitly authorize motions in limine, but under the
20 district courts’ trial-management authority, judges can rule on pretrial evidentiary motions.¹ Limine
21 rulings are provisional; they are “not binding on the trial judge [who] may always change [her] mind
22 during the course of a trial.”² Denying a motion in limine does not guarantee that all evidence raised
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26 ¹ *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984).

27 ² *Ohler v. United States*, 529 U.S. 753, 758 n. 3 (2000); accord *Luce*, 469 U.S. at 41 (noting that in-
28 limine rulings are always subject to change, especially if the evidence unfolds in an unanticipated manner).

1 in the motion will be admissible at trial;³ it “merely means that without the context of trial, the court
2 is unable to determine whether the evidence in question should be excluded.”⁴

3 **B. The use of the word “gang” is precluded under a FRE 403 analysis.**

4 Federal Rule of Evidence 403 allows a court to exclude relevant evidence if its probative
5 value is substantially outweighed by a danger of unfair prejudice. I find that referring to the
6 defendants as “gang” members is unfairly prejudicial and must be precluded under FRE 403.
7 Referencing these motorcycle groups, organizations, or clubs as a “gang” is not probative of any of
8 the elements of conspiracy to interfere with commerce by extortion. Although the defendants’
9 shared affiliations and group memberships are relevant to proving that they conspired together,
10 referring to those groups as “gangs” (as opposed to clubs, organizations, or groups) does not make
11 any fact of consequence more or less likely, and the danger of unfair prejudice flowing from the term
12 “gang” is great.⁵ I therefore grant Carr’s motion. The government is precluded from using the word
13 “gang” at trial to describe the motorcycle groups at issue in this case. The parties and witnesses
14 should use the word “club,” “organization,” or “group” instead.

15 **Conclusion**

16 Accordingly, IT IS HEREBY ORDERED that Carr’s motion in limine [ECF No. 196] is
17 **GRANTED.**

18 Dated this 16th day of May, 2016.

19 
20 Jennifer A. Dorsey
21 United States District Judge

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23 ³ *Tracey v. A. Family Mut. Ins. Co.*, 2010 WL 3724896 (D. Nev. 2010) (quoting *Ind. Ins. Co.*, 326 F.
24 Supp. 2d at 846).

25 ⁴ *Id.* (quoting *Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004) (internal
26 quotation marks omitted).

27 ⁵ See *Kennedy v. Lockyer*, 379 F.3d 1041, 1055–56 (9th Cir. 2004 (citing *United States v. Hankley*,
28 203 F.3d 1160, 1170 (9th Cir. 2000) (internal quotations and citations omitted) (“[T]estimony
regarding gang membership creates a risk that the jury will [probably] equate gang membership with
the charged crimes.”)).